

# NEWSLETTER No. 100

JANUARY 2023



## São Paulo

Rua Gomes de Carvalho, nº 1507  
2º andar – Vila Olímpia  
04547-005 – São Paulo – SP  
+55 (11) 4210-4010

## Rio de Janeiro

Rua Joana Angélica, nº 228  
Ipanema  
22420-030 – Rio de Janeiro – RJ  
+55 (21) 2523-5960

 **moreira  
menezes,  
martins**  
ADVOGADOS



# SUMMARY

NEWSLETTER No. 100 | JANUARY 2023

**LAW ESTABLISHES GUIDELINES FOR THE MARKET FOR  
VIRTUAL ASSETS (“CRYPTOASSETS”)**

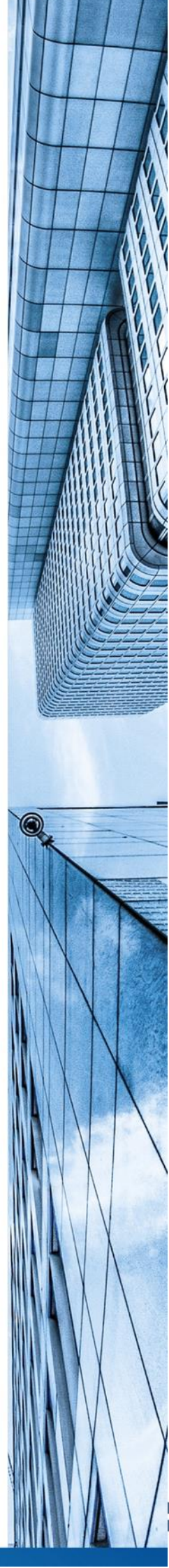
---

3

**CVM PUBLISHES NEW REGULATORY FRAMEWORK FOR  
INVESTMENT FUNDS**

---

4



## LAW ESTABLISHES GUIDELINES FOR THE MARKET FOR VIRTUAL ASSETS (“CRYPTOASSETS”)

On December 22<sup>nd</sup>, 2022, the Brazilian Federal Law No. 14,478/2022 was published, providing guidelines to be observed for provision of services involving virtual assets.

Article 3 of Law No. 14,478/2022 defines virtual asset as the “digital representation of an asset that can be traded or transferred by electronic means and for making payments or for the purpose of investment.” The numeral items of the law also determine that the following assets can not be considered to be virtual assets: (i) domestic or foreign currency; (ii) the electronic currency referred to in the Brazilian Federal Law No. 12,865/2013 (“resources stored in an electronic device or system that permits the end user to carry out payment transactions”); (iii) instruments that provide to their owners new products or benefits (e.g., points, rewards or loyalty programs); and (iv) representations of assets whose issuance, booking, trading or settlement is set forth in a law or regulation (e.g., securities or other financial assets).

Likewise, Article 5 of Law No. 14,478/2022 defines “virtual asset service providers” as legal entities that carry out, on behalf of third parties, at least one of the following services involving virtual assets: (i) exchange between virtual assets and national or foreign currency; (ii) exchange between multiple virtual assets; (iii) transfer of virtual assets; (iv) custody or management of virtual assets or instruments that enable control over virtual assets; or (v) participation in financial services and provision of services related to the offer by an issuer or sale of virtual assets.

According to Law No. 14,478/2022, the functioning of virtual asset service providers will depend on prior authorization of a body or entity of the federal government, which will be defined by an act of the executive power.

The competence of the referred body or entity will cover the granting of authorization for the functioning and possible corporate transactions of service providers (e.g., transfer of control, merger and amalgamation), imposition of conditions for the exercise of positions in the referred companies, supervision of activities, and application of penalties among others. That body or entity will establish the conditions and time frames, not shorter than 6 months, for virtual asset service providers that are already active to adjust themselves to Law No. 14,478/2022.

Finally, Law No. 14,478/2022 has altered the Brazilian Criminal Code to classify crimes of fraud involving the use of virtual assets, securities or other financial assets. In this respect, it shall be deemed a crime to “organize, manage, offer or distribute portfolios or intermediate in transactions that involve virtual assets, securities or financial assets for the purpose of obtaining an illicit advantage, in detriment to other parties, by inducing error or misleading such parties through artifice, ruse or other fraudulent means.” The commission of such crimes is punishable by imprisonment for 4 to 8 years and a fine.

Law No. 14,478/2022 will take effect 180 days after its publication (i.e., on June 20<sup>th</sup>, 2023).

More information, as well as the full text of Law No. 14,478/2022, can be found at the “Planalto” portal of the website of the Brazilian Federal Government ([www.gov.br/planalto](http://www.gov.br/planalto)).

## **CVM PUBLISHES NEW REGULATORY FRAMEWORK FOR INVESTMENT FUNDS**

On December 23<sup>rd</sup>, 2022, the Brazilian Securities Commission (CVM) published Resolution No. 175/2022 (“CVM Resolution No. 175”), covering the constitution, functioning, disclosure of information and provision of services by and to investment funds. CVM Resolution No. 175 consolidates the new regulatory framework for investment funds in Brazil, revoking 38 other normative instruments, as specified in its article 141.

Through this new framework, the CVM is aiming to improve the efficiency of the investment fund market, as well as to reduce the cost borne by participants in the market, while maintaining the necessary protection of investors.

CVM Resolution No. 175 is composed of: (i) a General Part, applicable to all investment funds; (ii) attachments that contain specific rules applicable to (ii.1) financial investment funds (FIFs), the new denomination given to the funds previously regulated by CVM Instruction 555/2014; and (ii.2) specific rules applicable to receivables investment funds (FIDCs).

One of the pillars of CVM Resolution No. 175 is to reflect the innovations introduced in the Brazilian legal system by the Brazilian Federal Law No. 13,874/2019 (“Economic Freedom Law”), among them:

- (i) the limitation of liability of each investor to the value of its subscribed shares;
- (ii) the possibility of investment funds having classes of shares with segregated equity; and
- (iii) the application of the mechanism of civil insolvency to investment funds.

Normative Attachment I of CVM Resolution No. 175 is applicable to FIFs (a classification that includes stock, currency, multi-market and fixed-income funds) and brings the following regulatory innovations:

- (i) possibility of investing in “environmental assets” and cryptoassets;
- (ii) greater flexibility in making investments, by expanding the concentration limits by type of financial asset;
- (iii) possibility of FIFs targeted at investors in general to apply up to 100% of their net assets abroad (this was previously limited to 20%); and
- (iv) establishment of capital risk exposure limits according to the FIF class: 20% of net assets of fixed-income funds; 40% of net assets of currency and stock investment funds; and 70% of net assets of multi-market funds (limits not applicable to professional investors).

In turn, Normative Attachment II of CVM Resolution No. 175 regulates FIDCs and reflects the following regulatory innovations, among others:

- (i) attribution of responsibility to the portfolio manager for structuring the fund, as well as for verifying the quality of the underlying credit rights;
- (ii) need for the credit rights to be recorded with a registration entity authorized to function by the Central Bank of Brazil; and
- (iii) possibility that the shares of FIDCs can be distributed to investors in general, as long as certain requirements are satisfied.

With regard to the Environmental, Social and Governance Agenda (ASG), CVM Resolution No. 175 specifies that the bylaws of the fund and the descriptive attachment of the class of shares with denomination containing reference to environmental, social and governance factors, such as “ESG”, “ASG”, “environmental”, “green”, “social”, “sustainable” or any terms related to sustainable finance must establish:

- (i) what environmental, social or governance benefits are envisioned and how the investment policy aims to attain them;
- (ii) what methods, principles or guidelines are followed for qualification of the fund or class according to the denomination;
- (iii) which entity is responsible for certifying or issuing a second opinion about the qualification, if any, as well as information about the Independence of these aspects in relation to the fund; and
- (iv) specification of the form, content and frequency of disclosure of a report on the environmental, social or governance achieved by the investment policy in the period, as well as identifying the agent responsible for preparing the report.

Finally, we stress that the categories of investment funds not yet covered by CVM Resolution No. 175 will be regulated by specific attachments, to be included before the Resolution takes effect (on April 3<sup>rd</sup>, 2023).

More information, along with the full text of CVM Resolution No. 175, can be found at CVM’s website ([www.gov.br/cvm](http://www.gov.br/cvm)).